IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3788 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL KANTILAL MULJIDAS

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 3788 of 2002
   Mr.Harin P.Raval for MR AMAR D MITHANI
   for Petitioner No. 1-5
   MR PK JANI for Respondent No. 1,5
   NOTICE SERVED BY DS for Respondent No. 1,2
   ..... for Respondent No. 3
   MR YV SHAH for Respondent No. 4
2. LETTERS PATENT APPEAL No. 161 of 2002
   MR AMAR D MITHANI for Petitioner No. 1
   ..... for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision:19-21/06/2002

ORAL JUDGEMENT

The present petition is preferred by the petitioner against the order dated 22.3.2002 passed by the Director of Municipalities, Gujarat State, Gandhinagar in purported exercise of powers under section 37 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") whereby the petitioner No.1 is removed as the Chairman of the Planning Committee and the petitioner Nos 2 to 5 are removed as the members of the Planning Committee and are also removed as the members/councillors of Unjha Municipality.

2. The short facts of the case are that the petitioners came to be elected as Councillors of Unjha Municipality at the General election of Unjha Municipality (hereinafter referred to as "the Municipality"). It is the case of the petitioners that there are in all 36 councillors elected at the said election which took place in December, 1999 result of which was declared on 4.1.2000. The case of the petitioners is that out of 36 councillors who came to be elected, 18 were belonging to Cong.I, 10 were belonging to BJP and 8 were Independent. The case of the petitioners is that the first meeting of the Municipality came to be held on 21.1.2000 and therefore their statutory term as the councillor of the Municipality is for a period of five years which would expire in January, 2005. The petitioners in their capacity as councillors subsequently were also elected as the members of the Planning Committee which is required to be constituted as per Gujarat Town Planning & Urban Development Act, 1976 (hereinafter referred to as "the T.P.Act"). The petitioners alleged that on account of the fact that they are belonging to Cong.I party and the party in power at the Statelevel is belonging to BJP, out of political vendetta, at the instance of respondent No.5 who is the leader of BJP, as alleged by the petitioners, a show cause notice was issued by the Director of Municipalities, Gujarat state-respondent No.2 herein on the allegation that the petitioners in the capacity as members of Planning Committee have granted various illegal permissions for construction and they have not taken steps for prohibiting the illegal constructions and therefore they have committed misconduct and therefore they were called upon to submit explanation as to why they should not be removed as the members of the Municipality under section 37 of the Act. On 16.1.2002 the petitioner No.1 preferred Special Civil Application

No.311/02 and the petitioner Nos 2 to 5 preferred Spl.C.A.No.2130/02 before this court challenging the show cause notice issued by the second respondent herein. This court in both these petitions initially issued notice observing that it will be open to the petitioners to raise all legal contentions available to them under law and it was also observed that the respondent No.2 shall decide the matter and dispose of in accordance with law after providing opportunity of being heard to the petitioners within two months. It was also observed by this court that if any order adverse to the petitioners is passed, the petitioners will be at liberty to move this court for making necessary amendment and the said adverse order which may be passed by the authority shall not be executed/implemented for a period of two weeks thereafter to enable the petitioners to pursue legal recourse available under law. It is the case of the petitioners that on 6.2.02 the petitioners applied to the Chief Officer of the Municipality to supply of copies of certain resolutions since the petitioners wanted to submit their reply to the show cause notice, dated 27.12.2001. However, on 8.2.2002 the Chief Officer of the Municipality intimated to one of the petitioners, namely, Bhagwandas that the record is with the Collector, Mehsana and therefore the copy may be obtained from the office of the Collector, Mehsana. The case of the petitioners is that on 14.2.2002 they submitted an application to the Collector, Mehsana for supplying all the resolutions and certain documents with a view to enable them to submit their reply and together with the said application the petitioners had also deposited a sum of Rs.50/- with the office of the Collector. Pending said application before the Collector, on 12.2.02 the petitioners submitted application by way of preliminary objections on the point of jurisdiction of respondent No.2 herein regarding the power to issue show cause notice. It is also the case of the petitioners that together with the said application on 12.2.2002 the petitioners also submitted an application for supplying better particulars or for clarification and in addition to the same the petitioners made an application to the respondent No.2 to supply the copies of the documents which are narrated in the said application from Sl.Nos. A to F and a request was made that the respondent No.2 may direct the office to supply all documentary evidence and reasonable time may be granted to the petitioners to submit their written reply after supply of aforesaid documents. It is the case of the petitioners that the documents which were to be supplied have not been supplied till today but on 19.2.2002 the hearing of application for deciding preliminary issue on the point

of jurisdiction was given by Shri Dharaiya who was the then Director of Municipalities and the hearing was concluded below the said application raising preliminary issue on the point of jurisdiction and from 22.2.2002 Shri Dharaiya who was the then Director of Municipalities was on leave and the hearing was fixed on 6.3.2002 before another Director, namely, Shri P.K.Ghadvi, who was incharge Director of Municipalities. It is the case of the petitioners that on 5.3.2002 the petitioner No.2 met with the accident and therefore he could not contact his advocate and on 6.3.2002 the advocate appearing for the petitioners communicated to the Director of Municipalities to adjourn the matter on the ground of disturbed situation and accident of the petitioner No.2. Thereafter, on 11.3.2002 the hearing was fixed and the petitioners had requested for time and it is the case of the petitioners that on 19.3.2002 the petitioners submitted an application in writing through their advocate requesting for grant of opportunity of hearing before taking final decision in the matter and it was verified that till 19.3.2002 no order was passed.

3. On 21.3.2002 aforesaid Special C.A.Nos 311 & 2130/02 came up for hearing before this court (M.S.Shah,J) and both the petitions came to be disposed of with a direction that in case the Director of Municipalities passes the order adverse to the petitioners, same shall not be implemented for a period of two weeks from the date of communication of the order with a further direction that the Director of Municipalities shall complete the inquiry and pass appropriate orders by 30.4.2002. It is also recorded in the said order that Mr.Sen, Ld.AGP has sought time on the ground that the Director of Municipalities is presently on leave. However, it appears that on 22.3.2002 Shri P.K.Gadhvi was holding the office of the Director of Municipalities passed final order under section 37 of the Act whereby the petitioners are removed as members of the Municipality and the petitioner No.1 is also removed as Chairman of the Planning Committee. It is this order which is under challenge before this court.

4. Mr.Raval appearing for Mr.Mithani on behalf of petitioners submitted that with a view to see that the directions given by this court on 21.3.2002 for not to implement the same for a period of two weeks are conveniently bypassed, the order is served on petitioners only on 1.4.2002 and the petitioners therefore immediately preferred this petition and initially notice was issued on 6.4.2002 and observed that the protection shall continue upto 14.4.2002. Thereafter, on 11.4.2002

this court admitted the petition, however, declined to grant interim relief against which Letters Patent Appeal No.161/02 was preferred by the petitioner which came to be dismissed by the Division Bench of this court on 17.4.2002 and against the said order of the Division Bench dated 17.4.02 the petitioners preferred Special Leave to Appeal (Civil) No.9486/02 in the Apex Court and in the Special Leave to Appeal (Civil) No.9486/02 on 9.5.02 Apex Court has passed order for hearing and disposal of the matter in the Ist week of reopening and it was also further observed that if the writ petition can not be heard and disposed of and there is any election to the post of President of the Municipality, then notwithstanding the order of removal, petitioners will have the opportunity of voting and their vote should be kept in a sealed cover until the writ petition is finally heard and disposed of. Hence, he submitted that this matter should be finally heard by this court.

5. On behalf of the petitioners, Mr.Raval further submitted on merits that the impugned order is without any authority and competence of the Director of Municipalities in as much as it is the State who has power under section 5(6) of the T.P. Act to remove any person as a member of the area development authority if he is found guilty of misconduct in discharge of his duties. The allegation in the show cause notice are relating to the resolutions passed by the Planning Committee for the purpose of giving construction permission and therefore since the Planning Committee is constituted under section 6(2) of the T.P. Act the only authority competent to exercise the power of removal is the State Govt and not the Director of Municipalities. Mr.Raval alternatively submitted that assuming for the sake of argument that the State Govt has power of removal under section 37 of the Act then also the order has been passed in breach of principles of natural justice as no documents which formed the basis of show cause notice were supplied or in any case the documents which were demanded by the petitioners were also not supplied. Mr.Raval also submitted that in the absence of documents no reply could be submitted by the petitioners and, therefore, the order is in breach of principles of natural justice. Mr.Raval also submitted that, as a matter of fact, when the application was already submitted on 19.3.2002 the Director of Municipalities for giving opportunity of hearing before passing final order against the petitioners, the petitioners were carrying the impression that the hearing is concluded only upon the application raising preliminary objection on the point of jurisdiction and therefore they did not make the

submission so far as the other aspect of subject matter of show cause notice is concerned and therefore though the request was made for giving opportunity of hearing, instead of communicating the date for making submissions, the final order has been passed immediately after two days. Mr.Raval also submitted that this is an intended act on the part of the party in power at the statelevel at the instance of respondent No.5 to see that the petitioners who are belonging to opposite political party are removed as councillors with a view to see that the majority can be had at the ensuing election of the President of the Municipality which is likely to take place at the end of June/July, 2002. Mr.Raval at last also submitted that even if it is assumed for the sake of argument that in the absence of any reply all the allegations made in the show cause notice are true and correct then also all the allegations which are subject matter of the show cause notice relate to the functioning of the petitioners as the members of Planning Committee and they are not at all in any manner connected with the functioning as the councillors of the Municipality and therefore Mr.Raval submitted that in view of the decision of the Division Bench of this court in the case of Chimanbhai Patel vs Anand Municipality reported in 1983(1) GLR 67 and in the case of Popatlal Devidan Gandavi vs Satishkumar Rameshchandra Ahir reported in 1998(2)GLR 1217, the petitioners, at the most, can be removed as the members of the Planning Committee or so far as the petitioner No.1 is concerned he can be removed as the Chairman of the Planning Committee. He submitted that none of the petitioners can be removed as the councillor of the Municipality and therefore Mr.Raval submitted that the order in any case can not stand so far as the removal of the petitioners as the councillors of the municipality is concerned.

6. In view of last contention, it was put to Mr.Raval by the court that whether the petitioners have any grievance for the removal as the member of the Planning Committee or as the Chairman of the Planning Committee and in response thereto the petitioners have submitted by way of additional affidavit stating that the petitioners are not desirous to continue as member of the Planning Committee or as the councillor of the Unjha Area Development Authority and the petitioners are only desirous to continue as the councillors of Unjha Nagarpalika for the term for which they have been elected. In each of the said affidavits of the concerned petitioners it is stated as under:

"I do not wish to continue as a member of the

Planning Committee set up under section 6(2) of the Gujarat Town Planning & Urban Development Act of Unja Area Development Authority from which office I have been removed during my present term as councillor of Unjha Nagarpalika."

7. In view of the above and, more particularly, in view of the judgment of the Division Bench of this court in the matter of Chimanbhai Patel (supra) and more so when the petitioners have now no objection for removal being maintained qua the member of the Planning Committee and they are only desirous to assail the order so far as it relates to removal as the Councillors of the Municipality I find that it is not necessary for the court to examine the other aspects, namely, allegations of malafide exercise of powers etc. Therefore, the other side, i.e. the State Govt and other private respondents and the Municipality were called upon to make their submissions on the limited issue on the question of law as to whether the impugned order can be maintained for the removal of the petitioners as the councillors of the Municipality or not.

8. On behalf of the State Govt, i.e. the Director of Municipalities, the Ld.AGP has submitted that on correct and true interpretation of Sec.37 of the Act, the removal can be ordered as the member of Planning Committee and also as the Chairman of the Planning Committee as well as councillors of the Municipality. Ms.Devani submitted that when the local authority is designated as the Area Development Authority and the Planning Committee from amongst the councillors is constituted, all powers for all purposes of the Municipalities are exercised by the members of the Planning Committee and therefore any misconduct in capacity as the members of the Planning Committee can also be said to be the ground for removal as the councillor of the municipality. Ms.Devani submitted that when there is no specific constitution of Area Development Authority as provided under section 5 of the Act and when the local authority is designated as the Area Development Authority as per section 6 of the Act, section 5(6) of the Act would have no applicability and the authority who has power to remove as the councillors who are functioning as the members of the Planning Committee is referable to section 37 of the Act Therefore, she submitted that it can not be said that the order is without jurisdiction.

9. On behalf of respondent Nos 4 & 5, Mr.Y.V.Shah

and Mr.P.K.Jani respectively have submitted that the main basis for holding the office as a member of the Planning Committee is the capacity of a councillor and if a person is not a councillor of the Municipality he can not be a member of the Planning Committee or any other committee. Therefore, Mr.Jani submitted that the duties of the councillor can not be segregated with the duties of the members of the committee and therefore Mr.Jani submitted that when a person has committed any misconduct as a member of any committee it can always be said that he has committed misconduct also in the capacity of a councillor and therefore he can be removed under such circumstances as the councillor of the Municipality also. In furtherance of his submission Mr.Jani submitted that such an interpretation is required to be made of the Municipalities Act since there are no separate duties so far as the councillor is concerned. He, therefore, submitted that in the present case since the petitioners have committed misconduct in capacity as members of the Planning Committee, it can always be said that they have committed misconduct in capacity as councillors of the Municipality also and therefore their removal as the councillors of the Municipality is legal and valid.

10. Mr.Raval submitted that all the contentions which are sought to be canvassed on behalf of the State Govt as well as by the private respondents are answered by the Division Bench in the matter of Chimanlal Patel (supra) and further submitted that on perusal of the overall scheme it can not be said that there are no duties provided for the councillors. Mr.Raval submitted that in the present case the duties are separate as that of councillors and as that of the members of the Planning Committee and they can not be said to be overlapping. He submitted that since the functioning of the petitioners amounts to the functioning of the members of the committee and it could not have been done by anyother councillors who are not the members of the Committee, it can not be said that there is any misconduct in capacity as the councillor and therefore Mr.Raval submitted that at any rate the order can not stand in the eye of law so far as removal of councillors of the Municipality is concerned.

11. Before I proceed to examine the alternative contention of Mr.Raval, it is necessary to deal with the contention raised by Mr.Raval on the question of authority on the part of the Director of Municipalities. Section 2(iv) of the Gujarat Town Planning & Urban Development Act, 1976 provides for the definition of "area development authority" which reads as under"

"2(iv) "area development authority" means an area development authority constituted under section 5 and includes a local authority designated as such under subsection (1) of section 6 or Govt.company designated as such under section 6-A."

Therefore, it is clear that the area development authority could be the area development authority constituted under section 5 and would also include a local authority designated as such under subsection (1) of section 6 or Govt company designated as such under section 6-A.

12. Section 5(A) and section 5 (3) of the TP Act provide for constitution of Area Development Authority and the powers of constitution of such Area Development Authority are with the State Govt. The terms and conditions of members of the Area Development Authority are also to be determined by the State Govt. The Chairman and the members of an Area Development Authority shall hold the office during the pleasure of the State Govt. Therefore, since the constitution of the office of the Area Development Authority as contemplated under section 5 of the TP Act is to be made by the State Govt itself, by way of subsection (6) of section 5 it has been provided that the power of removal is with the State Govt. So far as the local authority which has been designated as Area Development Authority are concerned, provision has been made under section 6(1). Section 6(2) of the Act provides that when the local authority is designated as the Area Development Authority the Planning Committee shall be constituted which will include six members of the local authority out of whom one shall be designated as the Chairman. Further members, namely, the Chief Town Planner, Chief Officer and one official nominated by the State Govt are concerned, they are not the elected representatives of the concerned local authority. Section 6(3) of the Act provides that the Planning Committee set up under subsection (2) shall have all the powers, responsibilities, duties and status as are given to a Standing Committee or, as the case may be, Executive Committee, if any, appointed under the Act under which the local authority is constituted. Therefore, on correct and true interpretation of section 6 read with section 2(iv) it transpires that though the local authority is designated as the Area Development Authority, it will have a separate and distinct constitution and the Committee constituted for the purpose of exercising the powers by such designated local

authority as Area Development Authority is also separate and distinct and it can not be same as that of the Area Development Authority constituted under section 5 of the Act. By providing subsection (3) of the Section 6 of the Act, the legislature has intended to confer and to fasten all rights and responsibilities as that of other Committees constituted under the Municipalities Act. In that view of the matter, the only authority which will be competent to exercise the powers for removal will be the authority which is empowered under section 37 of the Act and not the authority as provided under section 5(6) of the TP Act. Therefore,, I can not agree with the contention raised by Mr.Raval that the action of removal taken by the Director of Municipalities under delegated power of the State Govt under section 37 of the Municipalities Act is without any competence or jurisdiction and hence said contention of Mr.Raval fails.

13. So far as the alternative contention of Mr.Raval that even if it assumed for the sake of argument that the Director of Municipalities has power under section 37 of the Municipalities Act, then also the order of removal can not stand in the eye of law so far as removal as councillor is concerned, same requires consideration. A perusal of show cause notice and the final order shows that all the allegations which have been found to be proved (of course exparte in the absence of reply of the petitioners) relate to the functioning of the petitioners as members of the Planning Committee and/or as Chairman of the Planning Committee, as the case may be. They are not, in any manner, connected with the functioning as the councillors of the Municipality independently. No material is brought to the notice of this court on behalf of respondent No.2 to show that the petitioner have committee misconduct in capacity as the councillors, save and except, the allegations made in the show cause notice and finding given in the order relates to the functioning of the petitioners as the members of Planning Committee. The provisions of the Municipalities Act show that the Municipalities, for the purpose of discharging its various functions, may constitute various committees, such as, Executive Committee or other committees as contemplated under sections 55, 56 & 57 of the Act. Any councillor who is so elected at the said statutory committees or other committees shall be constituted by the general body of the Municipality and will hold a separate and distinct office in the capacity as the member of the said committee or in capacity as the Chairman or Vice Chairman of the said committee. It is only those councillors who are elected at such committee would be entitled to function as the member of the said

Committee and no other councillor. Whereas in the general body meetings all the councillors will be entitled to participate and deliberate and are to function as the councillors. In a given case any decision of the any committee may be considered by the general body where all the councillors are to participate and decide. However, it is not necessary that in all the decisions of such committees there would be an intervention or contribution of other councillors also. The scheme of the Act is that the decision in respect of the business which has been assigned to the commitee is to be taken by such committee independently unless such decision is overruled or reversed by the general body. Therefore, the committees which is constituted under the Municipalities Act have the separate and distinct status and the persons who are members of such committee will have a separate and distinct office in addition to their capacity as the councillors which the councillors may exercise their right and function at the general body meeting or otherwise. In the present case, the constitution of the Planning Committee is a creation of the statute itself as provided under section 6(2) of the Act and, therefore, on reading of the provisions of the Act with the provisions of the TP Act it can be said that the Planning Committee is one of the Committees of the Municipality and said aspect is made apparent in view of subsection (3) of section 6 of the Act. Once it is found that each committee and the members of the said Committee will have an independent and separate office, duties and functioning in addition to the capacity or functioning as the councillors of the Municipality, it will have to be borne in mind while imposing penalty upon any person for the purpose of removal. At this stage, it would be worthwhile to refer to certain observations of the Division Bench of this court in the matter of Chimanlal Patel (supra). At para 5 of the said judgment the Division Bench of this court observed in case of a Chairman of a Dispensary Committee of the municipality as under:

"However, where the duties to be performed are distinct and attached to a particular office and can only be performed by a person holding the office, then it is obvious that he can be removed from that office on the ground that he misconducted himself while discharging his duties pertaining to that particular office. Therefore, a person who misconducts himself or conducts himself in a disgraceful manner while performing his duties as a President or a Chairman of a Committee constituted by the Municipality under

the Act can be removed from the office of the President or Chairman, as the case may be, but it seems difficult to hold that he can also be removed from the office of the Municipal Councillor even though the alleged misconduct or disgraceful conduct was not referable to anything done in the discharge of duties as a Municipal Councillor".

In the aforesaid case, i.e. Chimanlal Patel (supra) the Division Bench of this court at para 6 after referring the judgment of another Division Bench in case of Akbarali Kasamali vs N.G.Pandya, reported in (1973) 14 GLR 287 has observed as under:

"If a person has misconducted himself or conducted himself in a disgraceful manner while performing his duties as the President of a Municipality or Chairman of a committee appointed under the Act and if his acts have nothing to do with the office of the Municipal Councillor, he can only be removed from the office of the President or Chairman, as the case may be, but he can not be removed from the office of Municipal Councillor held by him. This position seems to us to be crystal clear not only from the plain language of the statute but also from the decision in Akbarali's case (supra) where a similar position in Panchayats Act was construed."

After making aforesaid observations the Division Bench in the aforesaid judgment at para 8 has dealt with the facts of said case where the petitioner therein was the Chairman of Dispensary Committee at the relevant point of time when the alleged acts of misconduct or disgraceful were committed. Thereby, the Division Bench concluded by observing as under:

"The office of the Chairman of a Committee is distinct and separate from the office of a Municipal Councillor. All the alleged acts of misconduct or disgraceful conduct were committed by the said petitioner in his capacity as the Chairman of the Dispensary Committee and not in his capacity as a Municipal Councillor. The two offices being distinct and separate, a penalty which can be imposed for acts of misconduct or disgraceful conduct in the performance of duties concerning one office can not be extended to the other office for the obvious reason that the

incumbent can not be said to have misconducted himself in the discharge of duties as Municipal Councillor. We, are, therefore, of the opinion that the petitioner's removal from the office of Municipal Councillor under subsection(1) of Section 37 of the Act for acts of misconduct or disgraceful conduct committed in the discharge of his duties as Chairman of the Dispensary Committee can not be sustained."

The aforesaid judgment of the Division Bench of this court is again considered by another Division Bench of this court (Coram: K.G.Balakrishnan & A.K.Trivedi,JJ) in case of Popatlal Devidan Gandavi vs Satishkumar Rameshchandra Ahir reported in 1998(2) GLR 1217. It was not a case of misconduct but was that of disgraceful conduct. The respondent No.7-Satishkumar Ahir who was the President of the Municipality was removed on the ground of disgraceful conduct by the authority empowered under section 37 of the Act since he was found to have been involved in criminal case and he was also detained under Prevention of Blackmarketing & Maintenance and Supply of Essential Commodities Act, 1980. The decision of the authority for removal of Shri Ahir was challenged initially before the learned single judge of this court and the learned single judge of this court found that the alleged disgraceful conduct as that of criminal prosecution and detention under Prevention of Blackmarketing & Maintenance and Supply of Essential Commodities Act, 1980 was not concerning to the office of the petitioner therein as the President of the Municipality and relying on the judgment in the matter of Chimanlal Patel (supra) the learned single judge found that the petitioner therein could not have been removed as the Councillor of the Municipality and therefore the decision of the authority of removal was quashed. The said judgment of the learned single judge (Coram: S.D.Pandit,J) was carried in appeal before the Division Bench of this court in the matter of Popatlal Gandavi(supra). While confirming the decision of the learned single judge, the Division Bench of this court has, once again, observed at paras 5 & 6 as under:

"5. In an earlier decision of a Division Bench of this court reported in 1983 (1) GLR 67 (Chimanbhai R.Patel vs Anand Municipality) a contrary view was taken. In that case, Section 37 of the Gujarat Municipalities Act was interpreted and it was held that the misconduct or disgraceful conduct must have connection to the official duties as a President of the

Municipality. It was stated in para 5 of the judgment that act of misconduct or disgraceful conduct or the incapacity must relate to the office of which he is sought to be stripped under the aforesaid provision.

6. In the present case, admittedly, the allegation regarding disgraceful conduct has no relation to the duties and functions of the President of Municipality. On going through the section, as stated above, it is clear that the President or Vice President, as the case may be, must have shown disgraceful conduct in relation to any act in discharge of his official duties.It is important to note that the President is an elected member of the people and he is holding such an office by virtue of the mandate given by the electorates. The State Govt is given power of removal only if he has been guilty of misconduct in the discharge of his duties or he has shown disgraceful conduct in respect of his official duties or if he is incapable of performing his duties. A plain reading of the relevant petition would only convey the meaning that disgraceful conduct also should have connection to his official duties. The learned single judge was perfectly justified in taking that view."

14. In view of the above decision, the law settled is that if a person has committed misconduct or is found to have committed disgraceful conduct in discharge of his duties as the office bearer or a member of the committee or a statutory committee of a Municipality, he can, at the most, be removed as the office bearer of such committee and he can not be removed as the councillor of the Municipality for such alleged misconduct unless and until such misconduct is also concerning his office as the councillor of the Municipality by the act which is overlapped the earlier alleged act of misconduct in capacity as the office bearer of the committee.

15. At this stage, Mr.Jani and Mr.Shah appearing on behalf of private respondents tried to make a distinction that so far as the duties of councillors are concerned, there is no express statutory duty provided under the Act. Mr.Jani also submitted that since only in capacity as the councillors of municipality the petitioners have come to be elected or inducted as the members or the Chairman of the Planning Committee, as the case may be, and therefore, it can be said that the functioning of the petitioners in capacity as the Chairman or members of the

Planning Committee has direct nexus with the functioning as the councillors of the Municipality and therefore the act can be said to be not only overlapping but it can also be said to be interconnected or interwoven. If the various provisions of the Gujarat Municipalities Act and, more particularly, sections 11, 38, 39, 51, 70, 72 & 73 are taken into consideration then it can not be said that there are no separate or distinct duties or responsibilities as the councillors of the Municipality and therefore once separate duties and responsibilities are to be discharged by the councillors in addition in their capacity as the members of the statutory committees when these members of the statutory committees are functioning it can not be said that the functioning of these persons as the members of statutory committees have any bearing or connection with their functioning as the councillors of the municipality unless it is demonstrated in a given case that the member has misconducted as the member of the statutory committee and there is also a contribution or positive act or a separate and distinct act as the member of municipality. In view of the fact that as I have found earlier, the status of the statutory commitee constituted by the municipality is not only an independent but it is only those members of the committee or the Chairman of the committee are entitled to discharge such duties and not other councillors and therefore when the status as the Chairman or the members of the statutory committee being separate and distinct vis-a-vis the status as the councillors of the municipality I can not accept the contention of Mr.Jani that in all cases whenever a person has functioned or committed misconduct in capacity as the Chairman or the member of the statutory committee it can be said that there is also simultaneous functioning and misconduct committed in his capacity as the councillor of the municipality. So far as the present case is concerned no material worth the name is brought to the notice of the court to show that in addition to functioning or committing alleged act of misconduct as the chairman or the members of the Planning Committee the petitioners have for the very subject matter have committed any act as the councillors of the municipality. Not only that but in the case before the Division Bench in the case of Chimanlal Patel (supra) the court was dealing with the fact situation of the Chairman of a Dispensary Committee who was in addition to his capacity as the Chairman of the Dispensary Committee was also the councillor of the municipality. Sitting as the single judge of this court, even otherwise also, I am bound by the decision of the Division Bench of this court when, more or less, is identical situation. Therefore, under the circumstances,

I can not accept the distinction sought to be canvassed by Mr.Jani as the judgment of the Division Bench in the matter of Chimanlal Patel(supra) is, in any case, binding to me.

16. I also can not accept the contention of Ms.Devani on behalf of the authority that when the person concerned has functioned as the member of respective committee, it is deemed that the person concerned has functioned as the councillor of the municipality because in her submission the Section 37 of the Act does not make any distinction regarding such duty to be discharged independently for separate and distinct office. Reason being as stated above and more particularly in the case of Chimanlal Patel(supra) the Division Bench of this court was dealing with the identical situation and the Division Bench has observed in the said judgment that the office of the Chairman of the Committee (in that case the Dispensary Committee) is distinct than the functioning as the councillors of the municipality and therefore in view of section 37 of the Act already interpreted by the Division Bench in the earlier judgment, the contention raised by Ms.Devani fails.

17. In view of the above, if the facts of the present case are examined it is apparent that if it is taken for granted that the findings of the authority made in the order for removal are true and correct then also they pertain to the granting of permission for construction of building as the Chairman or the member of Planning Committee, as the case may be, and there is neither any allegation in the show cause notice nor any finding pertaining thereto that the petitioners herein have committed any act independently or otherwise in capacity as the councillors of the Municipality for the alleged misconduct. Therefore, it is clear that in view of aforesaid and discussion and position of law, the petitioners, at the most, could have been removed under section 37 of the Act as the Chairman or members of the Planning Committee, as the case may be, and the petitioners could not have been removed as the councillors of the municipality for their alleged misconduct. Hence, the order passed by the Director of Municipalities, so far as it relates to the removal of petitioners as the councillors of the municipality is beyond the scope and ambit of section 37 of the Act, and it can be said to be without jurisdiction and illegal and therefore will have to be quashed and set aside.

18. It is made clear that this court has not examined the other aspects of the case, more particularly, the

contentions raised by the petitioners that the order has been passed without giving sufficient opportunity to the petitioners, since neither the documents were supplied nor opportunity of making oral submissions on the merits of the case was given though they were specifically demanded by the petitioners. This court has not examine the said aspects and rather it was not required to be examined because the petitioners themselves, as stated above, on their own, made a declaration that they are not desirous to continue or they are not pressing for reinstatement as the members of the Planning Committee of the Area Development Authority and they wish to continue only as the Councillors of Unjha Nagarpalika for the remainder of their term. Therefore, it is needless to mention that so far as the question of observance of principles of natural justice, contentions of both the sides are not examined and not decided. In view of the fact that the matter can be decided on the point that even if the allegations made in the show cause notice and the findings arrived at in the order are considered true, the petitioners could not have been removed as the councillors of the Municipality, it was found by the court that the other contentions are not required to be examined and decided.

19. In the result, the order dated 22.3.02 passed by the Director of Municipalities, so far as it relates to removal of the petitioners as the councillors of the Municipality is quashed and set aside with a clarification that the order is held to be valid and legal so far as the removal of the petitioners as the Chairman and members of the Planning Committee , as the case may be, is concerned.

20. It is also further clarified that on account of declaration made by the petitioners before this court none of the petitioners shall be entitled to function as Chairman or members of the Planning Committee till their regular term as the councillors of Municipality is over.

21. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

19-21/6/2002 (JAYANT PATEL,J)